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6 IN THE UNITED STATES DISTRICT COURT
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES GYPSUM COMPANY,

10 Plaintiff,

No. C 04-04941 JSW

11 v.

12 PACIFIC AWARD METALS, INC.,

13 Defendant.
14 _____/

**ORDER RE MISCELLANEOUS
ADMINISTRATIVE REQUEST
FOR LEAVE TO SUBMIT
TESTIMONY AND FOR ORDER
OF WAIVER OF PRIVILEGE**

15 This matter comes before the Court upon consideration of Defendant Pacific Award
16 Metals, Inc.'s ("Award") miscellaneous administrative request for leave to submit testimony and
17 for order of waiver of privilege and Plaintiff United States Gypsum Company's ("USG")
18 opposition thereto. This matter is ripe for decision and, pursuant to Northern District Civil
19 Local Rule 7-11, the Court resolves the matter on the papers.

20 Local Rule 7-11 sets forth the type of matters that are considered proper subjects of a
21 motion for administrative relief. Specifically, the rule provides:

22 during the course of case proceedings a party may require a Court order with
23 respect to miscellaneous administrative matters, not otherwise governed by a
24 federal statute, Federal or local rule or standing order of the assigned judge.
These motions would include matters such as motions to exceed otherwise
applicable page limitations or motions to file documents under seal, for
example.

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26 In its motion, Award asks for leave to submit privileged testimony in support of its
27 opposition to USG's motion for summary judgment. Award seeks to use the testimony in
28 question to support its false marking claim and to show that, contrary to USG's assertions, it
does have evidence that USG intended to deceive the public when it marked certain products as

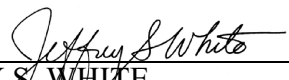
1 covered by the '198 Patent, and argues that USG's statements that Award has "no evidence" in
2 support this position waived any privilege related to the conversation. USG counters that its
3 statements in its motion for summary judgment are insufficient to create a waiver of attorney
4 client privilege.

5 The Court finds that this is not the type of request that should be made by way of a
6 motion for administrative relief, and DENIES this aspect of the request on that basis. If the
7 parties are able to resolve this matter in advance of the hearing on the motion for summary
8 judgment, the Court will consider approving a stipulation setting forth the parties' agreement.

9 Award also asks for an order requiring *in camera* review of documents that it has
10 requested from USG, but which USG contends are privileged. Award contends that the crime-
11 fraud exception applies to these documents and that they should be produced to the Court. The
12 Court construes this request as a discovery dispute. Accordingly, this aspect of Award's motion
13 for administrative relief also is DENIED. However, the Court's ruling on this aspect of
14 Award's motion is made without prejudice to raising the issue before Magistrate Judge James.

15 **IT IS SO ORDERED.**

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17 Dated: May 18, 2006

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20 JEFFREY S. WHITE
21 UNITED STATES DISTRICT JUDGE
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